

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

VINCENT DANIEL HOPPER,

Plaintiff,

v.

LORETTA MARTIN *et al.*,

Defendants.

Case No. C06-5085RBL

REPORT AND  
RECOMMENDATION TO  
DISMISS COMPLAINT  
WITHOUT PREJUDICE

**NOTED FOR:  
MAY 12<sup>th</sup> 2006**

This case has been referred to Magistrate Judge J. Kelley Arnold pursuant to 28 U.S.C. § 636(b)(1)(B). This matter comes before the court upon plaintiff's request/motion to voluntarily dismiss his complaint, (Dkt. # 9). The court entered an order to show cause why the action should not be dismissed and in response plaintiff indicates "the plaintiff moves to dismiss this action." (Dkt. # 9, page 2). After reviewing plaintiff's response, and the remaining record, the Court recommends the action be **DISMISSED WITHOUT PREJUDICE**.

DISCUSSION

Under Rule 41, a plaintiff has the right to voluntarily dismiss his case when no answer or motion for summary judgment has been filed by an adverse party. Rule 41(a)(1) specifically provides that dismissal as a matter of right can be foreclosed only by the filing of an answer or a motion for summary judgment. Roddy v. Dendy, 141 F.R.D. 261, 262 (S.D. Mississippi, 1992). When ruling on a motion to dismiss without prejudice,

1 the district court must determine whether the defendant will suffer some plain legal prejudice as a result of the  
2 dismissal. Hyde & Drath v. Baker, 24 F.3d 1162, 1169 (9th Cir.1994); Hamilton v. Firestone Tire & Rubber  
3 Co., 679 F.2d 143, 145 (9th Cir.1982).

4 Here, the complaint has not been served. Thus, plaintiff has a right to dismiss the action.

5 CONCLUSION

6 Accordingly, plaintiff's request to voluntarily dismiss his complaint (Dkt. # 9) should be **GRANTED**.  
7 A proposed order accompanies this report and recommendation.

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9 Dated this 17<sup>th</sup> day of April, 2006.

10 /s/ J. Kelley Arnold  
11 J. Kelley Arnold  
12 United States Magistrate Judge  
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